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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/265,788	03/10/1999	ROBERT ZHONG LU	08291/482001	4926

7590

03/26/2002

ANDREW N PARFOMAK
FISH & RICHARDSON
45 ROCKEFELLER PLAZA
NEW YORK, NY 10111

EXAMINER

GARRETT, DAWN L

ART UNIT

PAPER NUMBER

1774

DATE MAILED: 03/26/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

AS 22

Office Action Summary

Application N .

09/265,788

Applicant(s)

LU ET AL.

Examiner

Dawn Garrett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9 and 11-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9 and 11-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 25, 2002 has been entered.

Response to Amendment

2. The amendment dated December 20, 2001 has been entered. Claim 17 was amended. Currently, claims 1, 2, 4-9, and 11-18 are pending.
3. The rejection of claim 17 under 35 USC 112, second paragraph, set forth in paper no. 15 (mailed July 20, 2001), paragraph 5, is withdrawn.
4. The rejection of claims 1, 2, 4-9, and 11-18 under 35 USC 103(a) as being unpatentable over Richter (US 5,728,667) for the reasons set forth in paper no. 13, paragraph 7 is maintained.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claims 1, 2, 13, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by van Buskirk et al. (US 5,576,284). Van Buskirk et al. disclose a disinfecting cleanser for hard surfaces (see abstract). Table 2 (col. 8) discloses a composition comprising Glucopon 225 per the requirement of an alkylpolyglycoside, C₈FA + 1 PO + 9EO per the instant further nonionic surfactant, 0.5% Bardac 22 per the quaternary ammonium compound having germicidal properties, and water. The recited polymeric cationic surfactant, builder, and conventional additives are optional, because they may be present at 0% by weight of the instant composition. Van Buskirk et al. disclose all components required by claims 1, 2, 13, and 16.

7. Claims 1, 2, 13, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Inoue et al. (EP 0 698 660 A2). Inoue et al. teach compositions for hard surfaces (see front page). Example 14 on page 10 discloses a composition comprising dioctyldimethyl ammonium chloride per the quaternary ammonium compound, alkylglycoside, alkoxylated alcohol (compound 4) per the further nonionic surfactant, and water. The recited polymeric cationic surfactant, builder, and conventional additives are optional, because they may be present at 0% by weight of the instant composition. Inoue et al. disclose all required components of claims 1, 2, 13, and 16.

Response to Arguments

8. Applicant's arguments filed December 20, 2001 with regard to Richter have been fully considered but they are not persuasive. Applicant argues the present formulations provide a "surprising...synergistic effect not apparent from the prior art". The examiner submits a comparison example commensurate in scope with Richter has not been

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provided to establish unexpected results. In addition, the submission of the Material Safety Data Sheet (MSDS) suggesting alkyl polyglycoside is an irritant is insufficient to establish unexpected results, because Richter discloses all components of the instant compositions and render obvious the claimed formulation including polyglycosides. Applicants state on page 5 of the response "as evidenced by the MSDS attached as Appendix A, one of skill in the art would have been motivated to avoid the use of alkylpolyglycosides in any compositions for which low ocular irritancy was sought."; however, applicants claim alkyl polyglycosides as essential components in the instant compositions. It is unclear to the examiner how alkyl polyglycosides would not be irritants in the instant formulations and clearly would be irritants in the Richter composition, as apparently suggested by applicant. Properties such as mildness or irritancy are inherent to alkyl polyglycoside compounds. Furthermore, recitation of a newly disclosed property does not distinguish over a reference disclosure of the article or composition claims. *General Electric v. Jewe Incandescent Lamp Co.*, 67 USPQ 155. *Titanium Metal Corp. v. Banner*, 227 USPQ 773. Applicant bears responsibility for proving that reference composition does not possess the characteristics recited in the claims. *In re Fitzgerald*, 205 USPQ 597, *In re Best*, 195 USPQ 430. The rejection over Richter is respectfully maintained.


Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dawn Garrett whose telephone number is (703)305-0788. The examiner can normally be reached Monday through Friday.

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10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached on (703)-308-0449. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-2351.



D.G.

March 25, 2002

CYNTHIA H. KELLY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

